

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil No. 05-1253-CV-W-DW
)	
v.)	Controlled Substances Act,
)	21 U.S.C. § 801 <i>et seq.</i>
THOMAS H. GARRETT, M.D.,)	
)	
Defendant.)	

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (“Agreement”) is entered into by and between the UNITED STATES OF AMERICA ("United States") and Thomas H. Garrett (“Garrett”).

BACKGROUND

1. The United States' claims in this matter arise out of an investigation of Garrett, a physician and Drug Enforcement Agency (“DEA”) registrant. 21 U.S.C. § 842(a)(1), provides that it shall be unlawful for any person who is subject to the requirements of 21 U.S.C. § 843, that is, DEA registrants, to distribute or dispense a controlled substance in violation of 21 U.S.C. § 829. 21 U.S.C. § 842(c) provides that violators shall be subject to a civil monetary penalty of not more than \$10,000.00 per violation.

2. The United States’ claims arise from allegations Garrett committed the following acts in violation of the Controlled Substances Act (“CSA”):

(a) failed to denote the finished form (product description, bottle size and strength) of a controlled substance on a required biennial inventory.

21 U.S.C. § 842(a)(5);

(b) failed to maintain complete and accurate receipt records for controlled substances. 21 U.S.C. § 842(a)(5);

(c) failed to maintain receipt records for controlled substances from DEA registrants. 21 U.S.C. § 842(a)(5); and

(d) failed to maintain complete and accurate controlled substance dispensing records to account for the controlled substances. 21 U.S.C. § 842(a)(5).

3. The United States filed a Complaint in this matter based on the aforementioned allegations on December 16, 2005, in the United States District Court for the Western District of Missouri, Case No. 05-1253-CV-W-DW.

4. Efforts to resolve these claims culminated in settlement discussions between representatives of the Department of Justice and Garrett's counsel. On or about November 29, 2005, the parties reached agreement on all issues. This Agreement is intended to memorialize the terms of the settlement.

5. In entering into this Agreement, Garrett does not admit any liability to the United States, and in fact expressly denies any such liability.

TERMS AND CONDITIONS

6. For and in consideration of the mutual promises and representations set forth in this Agreement, the United States and Garrett agree that Garrett shall pay to the United States a Civil Monetary Penalty in the sum of Eighty-five Thousand and NO/100 (\$85,000.00) ("the CMP"). Payment shall be made within 30 days of the execution of this agreement by electronic funds transfer to the United States Department of Justice, United States Attorney's Office,

Charles Evans Whittaker Courthouse, 400 East 9th Street, 5th Floor, Kansas City, Missouri, 64106, as set forth in the instructions provided by the United States Attorney's Office's Financial Litigation Unit, attached hereto as Exhibit A.

7. The United States and Garrett agree as part of this Release and Settlement Agreement ("Agreement") that Garrett is now eligible to reapply for a DEA license to prescribe Schedule III, IV and V controlled substances. One year after the date this agreement is signed, Garrett will be eligible to reapply for a Schedule II license. The Schedule II license may be issued at the discretion of the DEA.

8. Upon full payment by Garrett of the CMP as set forth in paragraph 6, the United States shall release any claims it has under the CSA concerning the events referenced in paragraph 1-3, above. The United States further agrees that, upon full payment by Garrett of the CMP set forth in paragraph 6, the United States will not institute any administrative action or claim against Garrett for the events referenced in this Agreement.

9. Upon full payment by Garrett of the CMP as set forth in paragraph 6, the United States shall file a Motion to Dismiss, requesting the Court enter an Order dismissing Case Number 05-1253-CV-W-DW, with each party to bear its own costs.

10. In the event Garrett fails to pay the CMP in accordance with paragraph 6 above, Garrett shall be in default of this Agreement without further notice or presentment and demand by the United States and the United States may, at its sole option, exercise one or more of the following rights:

(a) Garrett irrevocably consents to the entry of judgment against him, without further notice, which notice Garrett specifically waives, in the amount of

the full remaining unpaid balance of the CMP, plus interest compounded daily, accrued from the date of such default (defined as the day after the due date for any payment set forth in paragraph 4, above, which is not paid), at the U.S. Treasury tax and loan account rate in effect on the date of the default, plus the costs of suit and attorneys' fees. In such event, and to effectuate the entry of such judgment, Garrett waives all defenses, if any, to the entry of such judgment against him, and forfeits all right, title and interest in the amount of the remaining indebtedness and interest thereon.

(b) Declare this Settlement Agreement breached, and proceed against Garrett in the Lawsuit, crediting any amount paid by Garrett pursuant to this Agreement against the final judgment in such action. Garrett agrees that he will not assert or in any way rely upon as a defense to such an action the statute of limitations, laches, or any other defense that the action is barred by the passage of time, except as Garrett would have been entitled to assert and rely upon on the date Garrett entered into this Agreement.

(c) File an action for specific performance of the terms set forth in this Agreement. Should the United States prevail in such an action, it shall be entitled to an award of attorney's fees and costs in its favor and against Garrett for the time and expenses involved in presenting such action;

(d) Satisfy the CMP, or any portion of the CMP, by offset of any monies payable to Garrett by any department, agency or agent of the United States, and;

(e) Exercise any other rights granted by law, or recognizable at common law or equity.

11. It is understood and agreed that, except as expressly stated in this Agreement, this Agreement expresses full and complete settlement of liabilities claimed and denied, that there is absolutely no agreement or reservation not clearly expressed within the agreement.

12. The parties agree that this Agreement may be made public in its entirety, and Thomas E. Garrett expressly consents to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

13. This Agreement shall be construed in accordance with the laws of the United States.

14. All provisions of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by the respective heirs, successors and assigns of the parties to this Agreement.

15. The individuals executing this Agreement on behalf of the United States and

Garrett represent that they are duly authorized to execute this Agreement.

AGREED AND EXECUTED by the parties hereto:

UNITED STATES OF AMERICA

By: /s/ Jane Pansing Brown
Todd P. Graves
United States Attorney

Date: 12-07-05

Jane Pansing Brown, #30658
Assistant United States Attorney
Western District of Missouri
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ATTORNEYS FOR PLAINTIFF

CARSON & COIL, P.C.

By /s/ Douglas W. Hennon
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Jefferson City, MO 65102
Telephone: (573) 636-2177
Facsimile: (573) 636-7119

Date: 12-13-05

ATTORNEYS FOR DEFENDANT GARRETT

and

 /s/ Thomas H. Garrett
Thomas H. Garrett, M.D.
1459 Hawk Island Drive
Osage Beach, MO 65065

Date: 12-12-05